



**Billing Code: 4310-MR-W**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Ocean Energy Management**

**[Docket No. BOEM-2013-0019]**

**Atlantic Wind Lease Sale 1 (ATLW1) Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Virginia—Final Sale Notice**

**MMAA104000**

**AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.**

**ACTION: Final Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Virginia.**

**SUMMARY:** This document is the Final Sale Notice (FSN) for the sale of a commercial wind energy lease on the Outer Continental Shelf (OCS) offshore Virginia, pursuant to BOEM's regulations at 30 CFR 585.216. BOEM is offering Lease OCS-A 0483 for sale using an ascending clock auction format. The lease area comprises the Virginia Wind Energy Area (WEA) described in the *Call for Information and Nominations* (Call) published on February 3, 2012 (see "Area Offered for Leasing" below for a description of the WEA and lease area) (77 FR 5545). The lease area is identical to that announced in the *Proposed Sale Notice (PSN) for Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore Virginia*, which was published on December 3, 2012, in the *Federal Register* with a 60-day public comment period (77 FR 71621). In this FSN, you will find information pertaining to the area available for leasing, lease provisions and conditions, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. The issuance of the lease resulting from this announcement would not constitute an approval of

project-specific plans to develop offshore wind energy. Such plans, expected to be submitted by the lessee, will be subject to subsequent environmental and public review prior to a decision to proceed with development.

**DATES:** BOEM will hold a mock auction for the eligible bidders on August 28, 2013. The monetary auction will be held online and will begin at 10:30 a.m. on September 4, 2013. Additional details are provided in the section entitled, “Deadlines and Milestones for Bidders.”

**FOR FURTHER INFORMATION CONTACT:** Erin C. Trager, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787-1320 or [erin.trager@boem.gov](mailto:erin.trager@boem.gov).

**AUTHORITY:** This FSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (“the Act”), as amended by section 388 of the Energy Policy Act of 2005 (EPAAct), and the implementing regulations at 30 CFR Part 585, including 30 CFR 585.211 and 585.216.

**BACKGROUND:** The lease area offered in this FSN is the same area as BOEM announced in the PSN on December 3, 2012 (77 FR 71621). BOEM received 15 comment submissions in response to the PSN, which are available in the *Federal Register* docket for this notice through BOEM’s website at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx>. BOEM has also posted a document containing responses to comments submitted during the PSN comment period and listing other changes that BOEM has implemented for this lease sale since publication of the PSN. This *Response to Comments and Explanation of Changes* can be found at the

following URL: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx>

On February 3, 2012, BOEM published the Notice of Availability (NOA) (77 FR 5560) for the final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for commercial wind lease issuance and site assessment activities on the Atlantic OCS offshore New Jersey, Delaware, Maryland, and Virginia, pursuant to the National Environmental Policy Act (NEPA). Consultations ran concurrently with the preparation of the EA and included consultation under the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), section 106 of the National Historic Preservation Act (NHPA), and the Coastal Zone Management Act (CZMA). The proposed lease area identified in this PSN matches the Virginia Wind Energy Area (WEA) described in the preferred alternative in the *Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia Final Environmental Assessment* (Regional EA), which can be found at:

<http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx>.

On May 29, 2012, BOEM initiated consultation with the National Marine Fisheries Service under the ESA for geological and geophysical (G&G) activities in support of oil and gas exploration and development, renewable energy, and marine minerals in the Mid and South Atlantic Planning Areas. Formal consultation concluded on May 24, 2013, with receipt of a Biological Opinion that, along with the previous informal consultation, informed the development of the Virginia commercial wind lease package.

Additional environmental reviews will be conducted upon receipt of the Lessee's proposed project-specific plans, such as a Site Assessment Plan (SAP) or Construction and Operations Plan (COP).

Potential bidders should be aware of the following three unsolicited nominations under consideration by BOEM, situated within or near the Virginia WEA.

**Atlantic Grid Holdings LLC Right of Way (ROW) Grant Request:** On March 31, 2011, Atlantic Grid Holdings LLC submitted an unsolicited application for a ROW grant. Following publication of a notice to determine competitive interest in the grant area and a 60-day public comment period, BOEM published its determination of no competitive interest on May 15, 2012 (77 FR 28620). The nomination and associated notices can be found at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Regional-Proposals.aspx>

**Virginia Department of Mines, Minerals and Energy (DMME) Research Lease Request #1:** On June 1, 2012, the Commonwealth of Virginia, DMME, submitted an unsolicited nomination for a research lease under 30 CFR 585.238 for the siting of two meteorological ocean and environmental monitoring platforms. BOEM announced the availability of a *Request for Competitive Interest: Research Lease for Renewable Energy on the Outer Continental Shelf Offshore Virginia* in the *Federal Register* for a 30-day public comment on December 21, 2012 (77 FR 75656). No indications of competitive interest were submitted in response to the request, and a Notice of a Determination of No Competitive Interest was published March 15, 2013 (78 FR 16529).

**Virginia DMME Research Lease Request #2:** On February 8, 2013, the Commonwealth of Virginia, DMME, submitted an unsolicited nomination for a research

lease under 30 CFR 585.238 for the siting of two 6-megawatt (MW) wind turbines for demonstration and research purposes. The research lease request nominates six sub-blocks to the west of the Virginia WEA for this purpose, in OCS Blocks 6061 and 6111. The nomination is under BOEM review.

**LIST OF ELIGIBLE BIDDERS:** BOEM has determined that the following companies are legally, technically, and financially qualified pursuant to 30 CFR 585.106 and 107, and are therefore eligible to participate in this lease sale as bidders.

<b>Company Name</b>	<b>Company Number</b>
Apex Virginia Offshore Wind, LLC	15040
Virginia Electric and Power Company <i>dba</i> Dominion Virginia Power	15042
Energy Management, Inc.	15015
EDF Renewable Development, Inc.	15027
Fishermen's Energy, LLC	15005
IBERDROLA RENEWABLES, Inc.	15019
Sea Breeze Energy LLC	15044
Orisol Energy US, Inc.	15020

**DEADLINES AND MILESTONES FOR BIDDERS:** This section describes the major deadlines and milestones in the auction process from publication of this FSN to execution of a lease pursuant to this sale.

- *Bidder's Financial Form:* Each eligible bidder must submit a Bidder's Financial Form to BOEM by August 6, 2013. Once this information has been processed by

BOEM, bidders may log into *pay.gov* and leave bid deposits. Any bidder that fails to submit the Bidder's Financial Form by this deadline may be prevented by BOEM from participating in the auction.

- *Bid Deposits:* Each bidder must submit an adequate bid deposit by August 22, 2013. Any bidder that fails to submit the bid deposit by this deadline may be prevented by BOEM from participating in the auction.
- *Mock Auction:* BOEM will hold a Mock Auction on August 28, 2013. The Mock Auction is not an "in-person" event. BOEM will contact each eligible bidder and provide instructions for participation. Only bidders eligible to participate in this auction will be permitted to participate in the Mock Auction.
- *Monetary Auction:* On September 4, 2013, BOEM, through its contractor, will hold the monetary auction. The auction will start at 10:30 a.m. The auction will proceed according to a schedule to be distributed by the BOEM Auction Manager during the auction. BOEM anticipates that the auction will continue on consecutive business days, as necessary, until the auction ends according to the procedures described in the Auction Format section of this notice.
- *Announce Provisional Winner:* BOEM will announce the provisional winner of the lease sale after the auction ends.
- *Refund Non-Winners:* BOEM will return the bid deposits of any bidders that did not win the lease.
- *Department of Justice (DOJ) Review:* BOEM will afford DOJ 30 calendar days to conduct an antitrust review of the auction, pursuant to 43 USC 1337(c), which reads, in relevant part:

Antitrust review of lease sales. (1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary [of the Interior] shall allow the Attorney General, in consultation with the Federal Trade Commission, 30 calendar days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

- *Send Lease:* BOEM will send three copies of the lease to the winner, with instructions on how to accept and execute the lease. The first 6-months of the first year's rent payment is due 45 calendar days after the winner receives the lease for execution.
- *Return the Lease:* The auction winner will have 10 business days from receiving the lease copies in which to post financial assurance, pay any outstanding balance of their bonus bids, and sign and return the three copies.
- *Execute Lease:* Once BOEM has received the lease copies and verified that all required materials have been received, BOEM will make a final determination regarding its execution of the lease and execute if appropriate.
- *Reject Unsuccessful Bids:* Once the lease has been executed, BOEM will provide unsuccessful bidders a written statement of the reasons their bids were rejected.

**AREA OFFERED FOR LEASING:** The lease area offshore Virginia contains 19 whole OCS blocks and 13 sub-blocks. The western edge of the proposed lease area is approximately 23.5 nautical miles (nmi) from the Virginia Beach coastline, and the lease area extends to an eastern edge that is approximately 36.5 nmi from the same location. The longest north/south portion is approximately 10.5 nmi in length and the longest

east/west portion is approximately 13 nmi in length. The entire area is approximately 112,799 acres, or 45,648 hectares. A description of the lease area and lease activities can be found in Addendum “A” of the lease, which BOEM has made available with this notice on its website at: <http://boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx>.

**Map of the Area Offered for Leasing:** A map of the area and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum and geographic X, Y (longitude, latitude), NAD83 Datum can be found at the following URL: <http://boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx>.

A large scale map of this area showing boundaries of the area with numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, Phone: (703) 787-1300, Fax: (703) 787-1708.

**AREA OFFERED AS A SINGLE LEASE:** The area available for sale will be auctioned as a single lease. One lease will be issued pursuant to this lease sale.

BOEM has decided to auction the area as a single zone resulting in a single lease in order, among other things, to take advantage of the simplicity of this type of sale, the importance of which was highlighted by comments received in response to the *Auction Format Information Request* (76 FR 76174). Further discussion about this decision is provided in the *Response to Comments and Explanation of Changes*.

**WITHDRAWAL OF BLOCKS:** BOEM reserves the right to withdraw areas from this lease sale prior to its execution of a lease.



**LEASE TERMS AND CONDITIONS:** BOEM has included specific terms, conditions, and stipulations for the OCS commercial wind lease in the Virginia WEA within Addendum “C” of the lease. BOEM reserves the right to apply additional terms and conditions to activities conducted on the lease incident to any future approval or approval with modifications of a SAP and/or COP. This lease, including Addendum “C”, is available on BOEM’s website at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx>. The lease consists of an instrument with 18 sections and the following six attachments:

Addendum “A” (Description of Leased Area and Lease Activities);

Addendum “B” (Lease Term and Financial Schedule);

Addendum “C” (Lease Specific Terms, Conditions, and Stipulations);

Addendum “D” (Project Easement);

Addendum “E” (Rent Schedule);

Appendix A to Addendum “C” (Incident Report: Protected Species Injury or Mortality);

and

Appendix B to Addendum “C” (Required Data Elements for Protected Species Observer Reports).

Addenda “A”, “B”, and “C” provide detailed descriptions of lease terms and conditions. Addenda “D” and “E” will be completed at the time of COP approval.

**Plans:** Pursuant to 30 CFR 585.601, the leaseholder must submit a SAP within 6 months of lease issuance. If the leaseholder intends to continue its commercial lease with an operations term, the leaseholder must submit a COP at least 6 months before the end of the site assessment term.

Pursuant to 30 CFR 585.629, a leaseholder may include in its COP a request to develop its commercial lease in phases. If a leaseholder requests and BOEM approves phased development, this approval will not affect the length of the preliminary site assessment, or commercial terms offered under the lease. The COP must describe in sufficient detail the activities proposed for all phases of commercial development, including a schedule detailing the proposed timelines for phased development. Further, the COP must include the results of all site characterization surveys, as described in 30 CFR 585.626(a), necessary to support each phase of commercial development. The requirements of the SAP remain the same as they would under a non-phased development scenario, and must meet the requirements set forth in the regulatory provisions in 30 CFR 585.605-613 for the full commercial lease area.

**FINANCIAL TERMS AND CONDITIONS:** This section provides an overview of the basic annual payments required of the Lessee, which will be fully described in the lease.

**Rent:** The first year's rent payment of \$3 per acre for the entire lease area will be separated into two 6-month payments. The first 6-month payment is due within 45 calendar days of the date the Lessee receives the lease for execution. The second 6-month payment is due by the first day of the seventh month after the Effective Date of the lease. Thereafter, annual rent payments are due on the anniversary of the Effective Date of the lease, i.e., the Lease Anniversary. Once the first commercial operations under the lease begin, rent will be charged on the part of the lease not authorized for commercial operations, i.e., not generating electricity. However, instead of geographically dividing the lease area into acreage that is "generating" and acreage that is "non-generating," the fraction of the lease accruing rent is based on the fraction of the total nameplate capacity

of the project that is not yet in operation. The fraction is the ratio of the actual nameplate capacity not yet authorized for commercial operations at the time payment is due divided by the maximum nameplate capacity authorized in the Lessee's most recent approved COP. This fraction is then multiplied by the amount of rent that would be due for the Lessee's entire leased area at the rental rate of \$3 per acre to obtain the annual rent due for a given year.

For example, for a lease the size of 112,799 acres (the size of the Virginia WEA), the amount of rent payment will be \$338,397 per year if the entire leased area is not yet authorized for commercial operations. If the Lessee has 500 MW authorized under commercial operations and its most recent approved COP specifies a maximum project size of 1000 MW on the entire leased area in any year of commercial operations, the rent payment will be \$169,198.

The Lessee also must pay rent for any project easement associated with the lease commencing on the date that BOEM approves the COP (or modification) that describes the project easement. Annual rent for a project easement that is 200-feet wide and centered on the transmission cable would be \$70 per statute mile. For any additional acreage required, the Lessee must also pay the greater of \$5 per acre per year or \$450 per year.

**Operating Fee:** The annual operating fee reflects a 2% operating fee rate applied to a proxy for the wholesale market value of electricity production. The initial payment is prorated to reflect the period between the start of commercial operations and the Lease Anniversary and is due within 45 days of the start of commercial operations; thereafter, subsequent annual operating fee payments are due on or before each Lease Anniversary.

The annual operating fee payment is calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production. For the purposes of this calculation, the imputed market value is the product of the project's nameplate capacity, the total number of hours in the year (8,760), a capacity utilization factor, and the annual average price of electricity derived from a historical regional wholesale power price index.

***Operating Fee Rate:*** The operating fee rate is set at 0.02 (i.e., 2%) during the entire life of commercial operations.

***Nameplate Capacity:*** Nameplate capacity is the maximum rated electric output, expressed in MW, which the turbines of the wind farm facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer. The nameplate capacity at the start of each year of commercial operations on the lease will be specified in the COP. For example, if the Lessee has 20 turbines under commercial operations rated by the design manufacturer at 5 MW of output each, the nameplate capacity of the wind farm facility at the rated wind speed of the turbines would be 100 MW.

***Capacity Factor:*** Capacity factor represents the share of anticipated generation of the wind farm facility that is delivered to the interconnection grid (i.e., where the Lessee's facility interconnects with the electric grid) relative to the wind farm facility's generation at continuous full power operation at nameplate capacity, expressed as a decimal between zero and one. The capacity factor for the year in which the commercial operation date occurs and for the first six full years of commercial operations on the lease is set to 0.4 (i.e., 40%) to allow for one year of installation and testing followed by five

years at full availability. At the end of the sixth year, the capacity factor may be adjusted to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. Similar adjustments to the capacity factor may be made once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10 percent of the previous period's value.

***Wholesale Power Price Index:*** The wholesale power price, expressed in dollars per MW-hour, is determined at the time each annual operating fee payment is due, based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the Northeast – PJM West power market for the most recent year of data available as reported by the Federal Energy Regulatory Commission (FERC) as part of its annual State of the Markets Report with specific reference to the summary entitled, “Electric Market Overview: Regional Spot Prices.” The wholesale power price is adjusted for inflation from the year associated with the published spot price indices to the year in which the operating fee is to be due based on the Lease Anniversary using annual implicit price deflators as reported by the U.S. Department of Commerce's Bureau of Economic Analysis (BEA).

**Financial Assurance:** Within 10 business days after receiving the lease copies, the provisional winner must provide an initial lease-specific bond or other approved means of meeting the Lessor's initial financial assurance requirements in the amount of \$100,000. BOEM will base the amount of all SAP, COP, and decommissioning financial assurance requirements on estimates of the cost to meet all accrued lease obligations. BOEM will

determine the amount of supplemental and decommissioning financial assurance requirements on a case-by-case basis.

The financial terms can be found in Addendum “B” of the lease, which BOEM has made available with this notice on its website at: <http://boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx>.

**BID DEPOSIT AND MINIMUM BID:** A bid deposit is an advance cash deposit submitted to BOEM by a potential bidder to enable participation in the auction. No later than August 22, 2013, each bidder must have submitted a bid deposit of \$450,000. Any bidder that fails to submit the bid deposit by the deadline described herein may be prevented by BOEM from participating in the auction. Bid deposits will be accepted online via *pay.gov*.

Each BOEM lease sale requires a separate bid deposit. Therefore, to be eligible to participate in this auction, a bidder may not rely on a bid submitted for another lease sale.

If a bidder intends to participate in both this lease sale and another lease sale, for example ATLW-2 for leasing offshore Rhode Island and Massachusetts, that bidder must submit two separate bid deposits corresponding to the two lease sales. In addition, BOEM cannot guarantee the return of one bid deposit in time for those funds to be applied to another lease sale.

Approximately 112,799 acres are offered for sale as Lease OCS-A 0483 in this auction. The minimum bid is \$2 per acre for the lease area. Therefore, the minimum acceptable bid, i.e., the opening asking price, will be \$225,598.

Each bidder must complete the Bidder’s Financial Form that BOEM has made available with this notice on its website at: <http://boem.gov/Renewable-Energy->

[Program/State-Activities/Virginia.aspx](#). This form must be submitted by August 6, 2013, to BOEM, pursuant to the instructions posted with the form. This form requests that each bidder designate an email address, which the bidder should use to create an account in *pay.gov*. After establishing the *pay.gov* account, bidders may use the Bid Deposit Form on the *pay.gov* website to submit a deposit.

Following the auction, bid deposits will be applied against any bonus bids or other obligations owed to BOEM. If the bid deposit exceeds the bidder's total financial obligation, BOEM will refund the balance of the bid deposit to the bidder. BOEM will also refund the bid deposit to unsuccessful bidders.

## **AUCTION PROCEDURES:**

### **Summary**

The sale is being conducted using an online bidding system and follows an “ascending clock” auction format. In this format, BOEM sets an initial asking price for Lease OCS-A 0483 and increases that price incrementally based on the number of active bidders in each round until no more than a single active bidder remains in the auction. A bid submitted at the full asking price for the lease area in a particular round is referred to as a “live bid”. During each round, active bidders may take one of the following actions: (1) submit a live bid indicating that they are interested in acquiring the lease area at the current round’s stated asking price, or (2) submit an Exit Bid (see below for discussion of Exit Bids), or (3) exit the auction.

A bidder remains active in the auction as long as it continues to meet BOEM’s asking price in each round. If more than one live bid is received in a round, BOEM increases the asking price incrementally and conducts another auction round. BOEM

plans to raise the asking price following any round in which two or more bidders submitted live bids. The auction concludes at the end of the round in which the number of live bids received falls to one or zero.

BOEM will base asking price increments on a number of factors, including:

- Making the increments sufficiently large that the auction will not take an unduly long time to conclude;
- Decreasing the increments as the asking price of the lease area nears its final price.

The number of bids in the most recent round will be used as an indication of how close the lease area's asking price is to its final price. Accordingly, BOEM plans to use higher increments when there are many live bids, and reduce the increments as the auction progresses. BOEM intends to use bid increments in the range of 20% to 50% in early rounds of the auction. At some point, BOEM intends to reduce the bid increments to the 5% to 20% range. BOEM reserves the right during the auction to increase or decrease increments if it determines, in its sole discretion, that a different increment is warranted to enhance the efficiency of the auction process.

Between rounds, BOEM will release the following information:

- The number of live bids in the previous round of the auction.
- The asking price in the upcoming round of the auction.

Additional auction rounds occur as long as two or more bidders continue to submit a live bid.

It is possible that multiple bidders will be willing to meet the previous round's asking price, while no bidders will be willing to meet the current round's asking price.



Due to this scenario, bidders exiting the auction are allowed to submit an Exit Bid at an offer price greater than the asking price in the previous round and less than the asking price in the current round. Exit bidding allows bidders to express precisely the maximum price they are willing to offer while also minimizing the chance of ties. If a bidder exits the auction by placing an Exit Bid or choosing not to submit a live bid in the current round, it will no longer be allowed to submit bids in any subsequent round. If a bidder leaves the auction without submitting an Exit Bid, BOEM will treat the previous round's asking price as the bidder's Exit Bid in the current round. Exit Bids are not considered to be live bids for purpose of determining whether to conclude the auction.

The winning bid is the highest bid, whether that bid is a live bid or an Exit Bid. If there is a tie, the winning bidder is chosen by a random draw. If a winning bidder does not execute a lease pursuant to the lease sale, BOEM reserves the right to determine which bid would have won in the absence of the winning bidder, and to offer a lease pursuant to this "next highest" bid.

### **Additional Information Regarding the Auction**

#### *Auction System Technical Supplement and Auction Manual*

BOEM has created an Auction System Technical Supplement (ASTS) to complement the procedures described in this notice by providing further details about the auction system. This document is available on BOEM's web site at

<http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx>.

Moreover, bidders will be provided with an Auction Manual shortly before the auction date. This document contains further instructions on using the auction system, as well as certain information that BOEM is not making available to the public for security

reasons, including the Auction Manager phone number and URL where the auction will be hosted.

#### *Bidder Authentication*

The Auction Manager will send several bidder authentication packages to each bidder shortly after BOEM processes the Bidder's Financial Forms. One package will contain a token for each authorized individual as noted on the Bidder's Financial Form. Tokens are digital authentication devices. The tokens will be mailed to the address of record that BOEM has on file for each company, care of the Primary Point of Contact indicated on the Bidder's Financial Form. This individual is responsible for distributing the tokens to the individuals authorized to bid for that company. Bidders are to ensure that each token is returned within three days following the auction. An addressed, stamped envelope will be provided to facilitate this process.

The second package contains login credentials for authorized bidders. The login credentials will be mailed to the address provided in the Bidder's Financial Form for each authorized individual. Bidders can confirm these addresses by calling 703-787-1320. This package will contain user login information and instructions for accessing the Auction Manual and Alternative Bidding Form. The login information, along with the tokens, will be tested during the mock auction.

#### *Monetary Auction Times*

This section will describe, from a bidder's perspective, how the auction will take place. This information will be elaborated on and clarified in the Mock Auction to be held on August 28, 2013.

The auction will begin at 10:30 a.m. on September 4, 2013. Bidders may log in as early as 8:30 a.m. on that day. We recommend that bidders log in no later than 9:30 a.m. on that day to ensure that any login issues have been resolved in time. Once bidders have logged in, they should review the auction schedule, which lists the start times, end times, and recess times of each round in the auction. Each round is structured as follows:

- Round bidding begins;
- Bidders enter their bids;
- Round bidding ends and the Recess begins;
- Sometime during the Recess, previous Round results are posted;
- Bidders review the previous Round results and prepare their next Round bids;
- Next Round bidding begins.

The first round will last about 30 minutes, though subsequent rounds may be closer to 20 minutes in length. Recesses are anticipated to last approximately 10 minutes. The descriptions of the auction schedule and asking price increments included with this FSN are tentative. Bidders should consult the auction schedule on the bidding web site during the auction for updated times. Bidding will continue until about 5:00 p.m. each day. BOEM anticipates the auction will last one or two days, but bidders are advised to prepare to continue bidding for additional business days as necessary to resolve the auction.

BOEM and the auction contractors will use the auction platform messaging service to keep bidders informed on issues of interest during the auction. For example, BOEM may change the schedule at any time, including during the auction. If BOEM changes the schedule during the auction, it will use the messaging feature to notify

bidders that a revision has been made, and direct bidders to the relevant page. BOEM will also use the messaging system for other changes and items of particular note during the auction.

Bidders may place bids at any time during the round. At the top of the bidding page, a countdown clock will show how much time remains in the round. Bidders have until the scheduled time to place bids. Bidders should do so according to the procedures described in the auction materials and practiced at the Mock Auction. No information about the round is available until the round has closed and results have been posted, so there should be no strategic advantage to placing bids early or late in the round.

#### *Alternate Bidding Procedures*

Any bidder who is unable to place a bid using the online auction should follow these instructions:

- Call BOEM/the BOEM Auction Manager at the help desk number that is listed in the Auction Manual *before* the end of the round.
- BOEM will authenticate the caller to ensure he/she is authorized to bid on behalf of the company.
- Explain the problem.
- BOEM may, in its sole discretion, accept a bid using the Alternative Bidding Procedure.
- The Alternative Bidding Procedure enables a bidder who is having difficulties accessing the Internet to submit its bid via an Alternative Bidding Form that can be faxed to the auction manager.

- If the bidder has not placed a bid, but calls BOEM before the end of the round and notifies BOEM that it is preparing a bid using the Alternate Bidding Procedure, and submits the Alternate Bidding Form by fax before the round ends, BOEM will likely accept the bid, though acceptance or rejection of the bid is within BOEM's sole discretion.
- If the bidder calls during the round, but does not submit the bid until after the round ends (but before the round is posted), BOEM may or may not accept the bid, in part based on how much time remains in the recess.

***Bidders are strongly encouraged to submit the Alternative Bidding Form before the round ends.***

- If the bidder calls during the recess following the round, but before the previous round's results have been posted, BOEM will likely reject its bid, even if it has otherwise complied with all of BOEM's Alternate Bidding Procedures.
- If the bidder calls to enter a bid after results have been posted, BOEM will reject the bid.

Bidders are held accountable for all bids placed during the auction. This is true if they continued bidding in the last round, if they placed an Exit Bid, or if they stopped bidding during the auction.

**ACCEPTANCE, REJECTION, OR RETURN OF BIDS:** BOEM reserves the right and authority to reject any and all bids. In any case, no lease will be awarded to any bidder, and no bid will be accepted, unless (1) the bidder has complied with all requirements of the FSN, applicable regulations and statutes, including, but not limited

to, bidder qualifications, bid deposits, and adherence to the integrity of the competitive bidding process, (2) the bid conforms with the requirements and rules of the auction, and (3) the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted that does not satisfy any of these requirements may be returned to the bidder submitting that bid and not considered for acceptance.

**PROCESS FOR ISSUING THE LEASE:** If BOEM proceeds with lease issuance, it will issue three unsigned copies of the lease to the winning bidder. Within 10 business days after receiving the lease copies, the winning bidder must:

1. Execute the lease on the bidder's behalf;
2. File financial assurance, as required under 30 CFR 585.515-537; and
3. Pay by electronic funds transfer (EFT) the balance of the bonus bid (bid amount less the bid deposit). BOEM requires bidders to use EFT procedures (not to include *pay.gov*) for payment of the balance of the bonus bid, following the detailed instructions contained in the "Instructions for Making Electronic Payments" available on BOEM's website at: <http://boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx>.

If the winning bidder does not meet these three requirements within 10 business days of receiving the lease copies as described above, or if the winning bidder otherwise fails to comply with applicable regulations or the terms of the FSN, the winning bidder will forfeit its bid deposit. BOEM may extend this 10 business-day time period if it determines the delay was caused by events beyond the winning bidder's control.

BOEM will not execute a lease until the three requirements above have been satisfied, BOEM has accepted the winning bidder's financial assurance, and BOEM has

processed the winning bidder's payment. The winning bidder may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand by BOEM. BOEM may accept other forms of financial assurance on a case-by-case basis in accordance with its regulations. BOEM encourages provisionally winning bidders to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

Within 45 calendar days of the date that the Lessee receives the lease copies, the Lessee must pay the first 6-months' rent using the *pay.gov* Renewable Energy Initial Rental Payment Form available at:

<https://pay.gov/paygov/forms/formInstance.html?agencyFormId=27797604>. The Lessee must pay the remaining 6-months' rent by the first day of the seventh month following the effective date of the lease, following the detailed instructions contained in the "Instructions for Making Electronic Payments" available on BOEM's website at:

<http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx>.

**ANTI-COMPETITIVE BEHAVIOR:** In addition to the auction rules described in this notice, bidding behavior is governed by Federal antitrust laws designed to prevent anticompetitive behavior in the marketplace. Compliance with the BOEM's auction procedures will not insulate a party from enforcement of the antitrust laws.

In accordance with the Act at 43 U.S.C. 1337(c), following the auction, and before the acceptance of bids and the issuance of leases, BOEM will "allow the Attorney General, in consultation with the Federal Trade Commission, 30 days to review the results of the lease sale."

If a bidder is found to have engaged in anti-competitive behavior or otherwise violated BOEM's rules in connection with its participation in the competitive bidding process, BOEM may reject the high bid.

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

- An agreement, either express or tacit, among bidders to not bid in an auction, or to bid a particular price;
- An agreement among bidders not to bid for the lease area;
- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the effect of limiting the final auction price.

BOEM may decline to award a lease if doing so would otherwise create a situation inconsistent with the antitrust laws (e.g., heavily concentrated market, etc.).

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see:

<http://www.justice.gov/atr/public/business-resources.html>, or consult counsel.

**BIDDER'S FINANCIAL FORM SELF-CERTIFICATION:** Each bidder is required to sign the self-certification, in accordance with 18 U.S.C. 1001 (Fraud and False Statements) in the Bidder's Financial Form, which can be found on BOEM's website: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx>. The form must be filled out and returned to BOEM in accordance with the "Deadlines and Milestones for Bidders" section of this notice.



**NON-PROCUREMENT DEBARMENT AND SUSPENSION REGULATIONS:**

Pursuant to regulations at 43 CFR Part 42, Subpart C, an OCS renewable energy Lessee must comply with the Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR 180 and 1400 and agree to communicate the requirement to comply with these regulations to persons with whom the Lessee does business as it relates to this lease, by including this term as a condition in their contracts and other transactions.

**FORCE MAJEURE:** The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any date, time, and/or location specified in the FSN in case of a force majeure event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to, natural disasters (e.g., earthquakes, hurricanes, floods), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, bidders should call 703-787-1320 or access the BOEM website at:

<http://www.boem.gov/Renewable-Energy-Program/index.aspx>.

**APPEALS:** The appeals procedures are provided in BOEM's regulations at 30 CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225:

- (a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons, and refund any money deposited with your bid, without interest.
- (b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under

30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing adverse final decisions with respect to lease sales are described in 30 CFR 585.118(c).

**PROTECTION OF PRIVILEGED OR CONFIDENTIAL INFORMATION:**

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information “Contains Confidential Information” and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM may not treat as confidential the legal title of the commenting entity (e.g., the name of your company). Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

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Tommy P. Beaudreau  
Director, Bureau of Ocean Energy Management

\_\_\_\_ July 1, 2013 \_\_\_\_  
Date

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